

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 739

By: Eason McIntyre

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5  
6 AS INTRODUCED

7 An Act relating to cities and towns; amending 11 O.S.  
8 2001, Sections 22-112, as amended by Section 1,  
9 Chapter 314, O.S.L. 2004 and 22-112.1 (11 O.S. Supp.  
10 2008, Section 22-112), which relate to condemnation  
11 procedures and boarding and securing dilapidated  
12 buildings; requiring municipal governing bodies to  
13 cause dilapidated buildings to be torn down and  
14 removed; modifying definition; modifying time period  
15 for demolishing certain structures; and providing an  
16 effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 11 O.S. 2001, Section 22-112, as  
19 amended by Section 1, Chapter 314, O.S.L. 2004 (11 O.S. Supp. 2008,  
20 Section 22-112), is amended to read as follows:

21 Section 22-112. A. A municipal governing body ~~may~~ shall cause  
22 dilapidated buildings within the municipal limits to be torn down  
23 and removed in accordance with the following procedures:

24 1. At least ten (10) days' notice that a building is to be torn  
down or removed shall be given to the owner of the property before  
the governing body holds a hearing. A copy of the notice shall be

1 posted on the property to be affected. In addition, a copy of the  
2 notice shall be sent by mail to the property owner at the address  
3 shown by the current year's tax rolls in the office of the county  
4 treasurer. Written notice shall also be mailed to any mortgage  
5 holder as shown by the records in the office of the county clerk to  
6 the last-known address of the mortgagee. At the time of mailing of  
7 notice to any property owner or mortgage holder, the municipality  
8 shall obtain a receipt of mailing from the postal service, which  
9 receipt shall indicate the date of mailing and the name and address  
10 of the mailee. However, if neither the property owner nor mortgage  
11 holder can be located, notice may be given by posting a copy of the  
12 notice on the property, or by publication as defined in Section 1-  
13 102 of this title. The notice may be published once not less than  
14 ten (10) days prior to any hearing or action by the municipality  
15 pursuant to the provisions of this section;

16 2. A hearing shall be held by the governing body to determine  
17 if the property is dilapidated and has become detrimental to the  
18 health, safety, or welfare of the general public and the community,  
19 or if the property creates a fire hazard which is dangerous to other  
20 property;

21 3. Pursuant to a finding that the condition of the property  
22 constitutes a detriment or a hazard and that the property would be  
23 benefited by the removal of such conditions, the governing body ~~may~~  
24 shall cause the dilapidated building to be torn down and removed.

1 The governing body shall fix reasonable dates for the commencement  
2 and completion of the work. The municipal clerk shall immediately  
3 file a notice of dilapidation and lien with the county clerk  
4 describing the property, the findings of the municipality at the  
5 hearing, and stating that the municipality claims a lien on the  
6 property for the destruction and removal costs and that such costs  
7 are the personal obligation of the property owner from and after the  
8 date of filing of the notice. The agents of the municipality are  
9 granted the right of entry on the property for the performance of  
10 the necessary duties as a governmental function of the municipality  
11 if the work is not performed by the property owner within dates  
12 fixed by the governing body. Any action to challenge the order of  
13 the municipal governing body shall be filed within thirty (30)  
14 business days from the date of the order;

15 4. The governing body shall determine the actual cost of the  
16 dismantling and removal of dilapidated buildings and any other  
17 expenses that may be necessary in conjunction with the dismantling  
18 and removal of the buildings, including the cost of notice and  
19 mailing. The municipal clerk shall forward a statement of the  
20 actual cost attributable to the dismantling and removal of the  
21 buildings and a demand for payment of such costs, by mail to the  
22 property owner. In addition, a copy of the statement shall be  
23 mailed to any mortgage holder at the address provided for in  
24 paragraph 1 of this subsection. At the time of mailing of the

1 statement of costs to any property owner or mortgage holder, the  
2 municipality shall obtain a receipt of mailing from the postal  
3 service, which receipt shall indicate the date of mailing and the  
4 name and address of the mailee. If a municipality dismantles or  
5 removes any dilapidated buildings, the cost to the property owner  
6 shall not exceed the actual cost of the labor, maintenance, and  
7 equipment required for the dismantling and removal of the  
8 dilapidated buildings. If dismantling and removal of the  
9 dilapidated buildings is done on a private contract basis, the  
10 contract shall be awarded to the lowest and best bidder; and

11 5. When payment is made to the municipality for costs incurred,  
12 the municipal clerk shall file a release of lien, but if payment  
13 attributable to the actual cost of the dismantling and removal of  
14 the buildings is not made within six (6) months from the date of the  
15 mailing of the statement to the owner of such property, the  
16 municipal clerk shall forward a certified statement of the amount of  
17 the cost to the county treasurer of the county in which the property  
18 is located. Once certified to the county treasurer, payment may  
19 only be made to the county treasurer except as otherwise provided  
20 for in this section. The costs shall be levied on the property and  
21 collected by the county treasurer as are other taxes authorized by  
22 law. Until finally paid, the costs and the interest thereon shall  
23 be the personal obligation of the property owner from and after the  
24 date of the notice of dilapidation and lien is filed with the county

1 clerk. In addition the cost and the interest thereon shall be a  
2 lien against the property from the date the notice of the lien is  
3 filed with the county clerk. The lien shall be coequal with the  
4 lien of ad valorem taxes and all other taxes and special assessments  
5 and shall be prior and superior to all other titles and liens  
6 against the property. The lien shall continue until the cost is  
7 fully paid. At the time of collection, the county treasurer shall  
8 collect a fee of Five Dollars (\$5.00) for each parcel of property.  
9 The fee shall be deposited to the credit of the general fund of the  
10 county. If the county treasurer and the municipality agree that the  
11 county treasurer is unable to collect the assessment, the  
12 municipality may pursue a civil remedy for collection of the amount  
13 owing and interest thereon including an action in personam against  
14 the property owner and an action in rem to foreclose its lien  
15 against the property. A mineral interest, if severed from the  
16 surface interest and not owned by the surface owner, shall not be  
17 subject to any tax or judgment lien created pursuant to this  
18 section. Upon receiving payment, the municipal clerk shall forward  
19 to the county treasurer a notice of such payment and shall direct  
20 discharge of the lien.

21 B. The municipality may designate, by ordinance, an  
22 administrative officer or administrative body to carry out the  
23 duties of the governing body specified in this section. The  
24 property owner shall have the right of appeal to the municipal

1 governing body from any order of the administrative officer or  
2 administrative body. Such appeal shall be taken by filing written  
3 notice of appeal with the municipal clerk within ten (10) days after  
4 the administrative order is rendered.

5 C. For the purposes of this section:

6 1. "Dilapidated building" means:

7 a. a structure which through neglect or injury lacks  
8 necessary repairs or otherwise is in a state of decay  
9 or partial ruin to such an extent that the structure  
10 is a hazard to the health, safety, or welfare of the  
11 general public,

12 b. a structure which is unfit for human occupancy due to  
13 the lack of necessary repairs and is considered  
14 uninhabitable or is a hazard to the health, safety,  
15 and welfare of the general public,

16 c. a structure which is determined by the municipal  
17 governing body or administrative officer of the  
18 municipal governing body to be an unsecured building,  
19 as defined by Section 22-112.1 of this title, more  
20 than three times within any twelve-month period,

21 d. a structure which has been boarded and secured, as  
22 defined by Section 22-112.1 of this title, for more  
23 than ~~thirty-six (36)~~ twelve (12) consecutive months,  
24 or

1 e. a structure declared by the municipal governing body  
2 to constitute a public nuisance; and

3 2. "Owner" means the owner of record as shown by the most  
4 current tax rolls of the county treasurer.

5 D. Nothing in the provisions of this section shall prevent the  
6 municipality from abating a dilapidated building as a nuisance or  
7 otherwise exercising its police power to protect the health, safety,  
8 or welfare of the general public.

9 E. The officers, employees or agents of the municipality shall  
10 not be liable for any damages or loss of property due to the removal  
11 of dilapidated buildings performed pursuant to the provisions of  
12 this section or as otherwise prescribed by law.

13 F. The provisions of this section shall not apply to any  
14 property zoned and used for agricultural purposes.

15 SECTION 2. AMENDATORY 11 O.S. 2001, Section 22-112.1, is  
16 amended to read as follows:

17 Section 22-112.1 A. After a building has been declared  
18 dilapidated, as provided in Section 22-112 of this title, and before  
19 the commencement of the tearing and removal of a dilapidated  
20 building, the governing body of any municipality may authorize that  
21 such a building be boarded and secured. However, if the dilapidated  
22 building is vacant and unfit for human occupancy and boarded and  
23 secured for a period of at least twelve (12) months, the governing  
24

1 body of any municipality may authorize the structure to be  
2 demolished pursuant to Section 22-112 of this title.

3 B. A governing body of any municipality may cause the premises  
4 on which an unsecured building is located to be cleaned of trash and  
5 weeds in accordance with the provisions of Section 22-111 of this  
6 title.

7 C. A governing body of any municipality may cause an unsecured  
8 building to be boarded and secured in accordance with the following  
9 procedures:

10 1. Before the governing body orders such action, at least ten  
11 (10) days' notice that such unsecured building is to be boarded and  
12 secured shall be given by mail to any property owners and mortgage  
13 holders as provided in Section 22-112 of this title. At the time of  
14 mailing of notice to any property owner or mortgage holder, the  
15 municipality shall obtain a receipt of mailing from the postal  
16 service, which receipt shall indicate the date of mailing and the  
17 name and address of the mailee. A copy of the notice shall also be  
18 posted on the property to be affected. However, if neither the  
19 property owner nor mortgage holder can be located, notice may be  
20 given by posting a copy of the notice on the property or by  
21 publication as defined in Section 1-102 of this title. Such notice  
22 shall be published one time, not less than ten (10) days prior to  
23 any hearing or action by the municipality pursuant to the provisions  
24 of this section. If a municipal governing body anticipates summary

1 abatement of a nuisance in accordance with the provisions of  
2 paragraph 9 of this subsection, the notice shall state: that any  
3 subsequent need for boarding and securing the building within a six-  
4 month period after the initial boarding and securing of the building  
5 pursuant to such notice may be summarily boarded and secured by the  
6 municipal governing body; that the costs of such boarding and  
7 securing shall be assessed against the owner; and that a lien may be  
8 imposed on the property to secure such payment, all without further  
9 prior notice to the property owner or mortgage holder;

10 2. The owner of the property may give written consent to the  
11 municipality authorizing the boarding and securing of such unsecured  
12 building and to the payment of any costs incurred thereby. By  
13 giving written consent, the owner waives any right the owner has to  
14 a hearing by the municipal governing body;

15 3. If the property owner does not give written consent to such  
16 actions, a hearing may be held by the municipal governing body to  
17 determine whether the boarding and securing of such unsecured  
18 building would promote and benefit the public health, safety or  
19 welfare. Such hearing may be held in conjunction with a hearing on  
20 the accumulation of trash or the growth of weeds or grass on the  
21 premises of such unsecured building held pursuant to the provisions  
22 of paragraph 3 of subsection A of Section 22-111 of this title. In  
23 making such determination, the governing body shall apply the  
24 following standard: the governing body may order the boarding and

1 securing of the unsecured building when the boarding and securing  
2 thereof would make such building less available for transient  
3 occupation, decrease a fire hazard created by such building, or  
4 decrease the hazard that such building would constitute an  
5 attractive nuisance to children.

6 Upon making the required determination, the municipal governing  
7 body may order the boarding and securing of the unsecured building;

8 4. After the governing body orders the boarding and securing of  
9 such unsecured building, the municipal clerk shall immediately file  
10 a notice of unsecured building and lien with the county clerk  
11 describing the property, stating the findings of the municipality at  
12 the hearing at which such building was determined to be unsecured,  
13 and stating that the municipality claims a lien on the property for  
14 the costs of boarding and securing such building and that such costs  
15 are the personal obligation of the property owner from and after the  
16 date of filing the notice;

17 5. Pursuant to the order of the governing body, the agents of  
18 the municipality are granted the right of entry on the property for  
19 the performance of the boarding and securing of such building and  
20 for the performance of all necessary duties as a governmental  
21 function of the municipality;

22 6. After an unsecured building has been boarded and secured,  
23 the governing body shall determine the actual costs of such actions  
24 and any other expenses that may be necessary in conjunction

1 therewith including the cost of the notice and mailing. The  
2 municipal clerk shall forward a statement of the actual costs  
3 attributable to the boarding and securing of the unsecured building  
4 and a demand for payment of such costs, by mail to any property  
5 owners and mortgage holders as provided in Section 22-112 of this  
6 title. At the time of mailing of the statement of costs to any  
7 property owner or mortgage holder, the municipality shall obtain a  
8 receipt of mailing from the postal service, which receipt shall  
9 indicate the date of mailing and the name and address of the mailee.

10 If a municipality boards and secures any unsecured building, the  
11 cost to the property owner shall not exceed the actual cost of the  
12 labor, materials and equipment required for the performance of such  
13 actions. If such actions are done on a private contract basis, the  
14 contract shall be awarded to the lowest and best bidder;

15 7. When payment is made to the municipality for costs incurred,  
16 the municipal clerk shall file a release of lien, but if payment  
17 attributable to the actual costs of the boarding and securing of the  
18 unsecured building is not made within thirty (30) days from the date  
19 of the mailing of the statement to the owner of such property, the  
20 municipal clerk shall forward a certified statement of the amount of  
21 the costs to the county treasurer of the county in which the  
22 property is located. Once certified to the county treasurer,  
23 payment may only be made to the county treasurer except as otherwise  
24 provided for in this section. At the time of collection the county

1 treasurer shall collect a fee of Five Dollars (\$5.00) for each  
2 parcel of property and such fee shall be deposited to the general  
3 fund of the county. The costs shall be levied on the property and  
4 collected by the county treasurer as are other taxes authorized by  
5 law. Until fully paid, the costs and the interest thereon shall be  
6 the personal obligation of the property owner from and after the  
7 date the notice of unsecured building and lien is filed with the  
8 county clerk. In addition the costs and the interest thereon shall  
9 be a lien against the property from the date the notice of the lien  
10 is filed with the county clerk. The lien shall be coequal with the  
11 lien of ad valorem taxes and all other taxes and special assessments  
12 and shall be prior and superior to all other titles and liens  
13 against the property. The lien shall continue until the costs and  
14 interest are fully paid. If the county treasurer and the  
15 municipality agree that the county treasurer is unable to collect  
16 the assessment, the municipality may pursue a civil remedy for  
17 collection of the amount owing and interest thereon by an action in  
18 personam against the property owner and an action in rem to  
19 foreclose its lien against the property. A mineral interest if  
20 severed from the surface owner, shall not be subject to any tax or  
21 judgment lien created pursuant to this section. Upon receiving  
22 payment, the municipal clerk shall forward to the county treasurer a  
23 notice of such payment and shall direct discharge of the lien;

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1           8. The municipality may designate by ordinance an  
2 administrative officer or administrative body to carry out the  
3 duties of the governing body specified in subsection C of this  
4 section. The property owner or mortgage holder shall have a right  
5 of appeal to the municipal governing body from any order of the  
6 administrative officer or administrative body. Such appeal shall be  
7 taken by filing written notice of appeal with the municipal clerk  
8 within ten (10) days after the administrative order is rendered;

9           9. If a municipal governing body causes a structure within the  
10 municipal limits to be boarded and secured, any subsequent need for  
11 boarding and securing within a six-month period constitutes a public  
12 nuisance and may be summarily boarded and secured without further  
13 prior notice to the property owner or mortgage holder. At the time  
14 of each such summary boarding and securing, the municipality shall  
15 notify the property owner and mortgage holder of the boarding and  
16 securing and the costs thereof. The notice shall state that the  
17 property owner may request an appeal with the municipal clerk within  
18 ten (10) days after the mailing of the notice. The notice and  
19 hearing shall be as provided for in paragraph 1 of this subsection.  
20 Unless otherwise determined at the hearing the cost of such boarding  
21 and securing shall be determined and collected as provided for in  
22 paragraphs 6 and 7 of this subsection;

23           10. A governing body of any municipality may determine that a  
24 building is unsecured and order that such building be boarded and

1 secured in the manner provided for in this subsection even though  
2 such building has not been declared, by the governing body, to be  
3 dilapidated; and

4 11. For the purposes of this subsection:

5 a. "boarding and securing" or "boarded and secured" means  
6 the closing, boarding or locking of any or all  
7 exterior openings so as to prevent entry into the  
8 structure,

9 b. "unsecured building" shall mean any structure which is  
10 not occupied by a legal or equitable owner thereof, or  
11 by a lessee of a legal or equitable owner, and into  
12 which there are one or more unsecured openings such as  
13 broken windows, unlocked windows, broken doors,  
14 unlocked doors, holes in exterior walls, holes in the  
15 roof, broken basement or cellar hatchways, unlocked  
16 basement or cellar hatchways or other similar  
17 unsecured openings which would facilitate an  
18 unauthorized entry into the structure, and

19 c. "unfit for human occupancy" means a structure that due  
20 to lack of necessary repairs is considered  
21 uninhabitable and is a hazard to the health, safety,  
22 and welfare of the general public.

23 D. The provisions of this section shall not apply to any  
24 property zoned and used for agricultural purposes.

1 SECTION 3. This act shall become effective November 1, 2009.

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3 52-1-156 JT 3/6/2009 6:27:42 AM  
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